

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 163

January 27, 2021

SUMMARY OF BILL: Requires defense counsel to meet with a defendant at least three times prior to the defendant being tried for an offense, unless good cause as to why is shown to the court.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$24,700/FY21-22 and Subsequent Years

Increase Local Expenditures - \$3,800/FY21-22 and Subsequent Years*

Assumptions:

- As this legislation specifies that the counsel must meet three times prior to a defendant being tried for an offense, it is assumed that this requirement would not apply to instances when the defendant pleads guilty, nolo contendere, etc.
- It is not expected that this legislation will have any effect on the total number of caseloads in trial courts.
- According to the 2011 VERA Institute of Justice study, *Has Booker Restored Balance? A Look at Data on Plea Bargaining and Sentencing*, there is an average of 96 percent of defendants which plead guilty in state courts.
- Between 2013 and 2015, there was a yearly average of 207,654 public defender cases opened. It is assumed this figure remains relatively consistent.
- The Tennessee Supreme Court Rules authorizes in Rule 13 that in cases of conflict or excessive workload, private attorneys may provide right to counsel services at an hourly rate not to exceed \$50 per hour.
- According to a 2000 Bureau of Justice Statistics study, *Defense Counsel in Criminal Cases*, these such cases represent 13.7 percent of all court appointed counsel in the 75 largest counties in the nation.
- Therefore, approximately 28,449 (207,654 x 13.7%) of court-appointed cases are serviced by private attorneys.
- There are approximately 241 assistant public defenders (APD).
- Each APD handles approximately 744 cases [(207,654 cases – 28,449 cases) / 241 APD] each year. Of those, an estimated 714 cases (744 x 96%) plead guilty resulting in no trial necessary.
- Of the cases serviced by private attorneys, an estimated 1,138 [(28,449 – (28,449 x 96%))] will be required to meet with their clients at least three times prior to the trial.

- This analysis assumes that counsel currently meets with a defendant an average of two times prior to trial and that a third meeting would last 30 minutes.
- There will be a recurring increase in expenditures of \$28,450 (1,138 cases x 0.5 hours x \$50 meeting).
- Shelby, Knox and Davidson Counties bear some cost of public defenders.
- In FY19-20, the three counties funded 13.19 percent of the entirety of state and local funding of public defenders.
- The mandatory increase in local government expenditures in FY21-22 and subsequent years will be \$3,753 (\$28,450 x 13.19%).
- The increase in expenditures for state government in FY21-22 and subsequent years will be \$24,697 (\$28,450 – \$3,753).
- It can be reasonably assumed that the requirements of this legislation will not cause undue burden on APD and can be accomplished with existing resources.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Bojan Savic, Interim Executive Director

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